



Brian Schweitzer
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender
Randi Hood

EXHIBIT 1
DATE 1-26-2011
HB _____

MEMORANDUM

TO: Pat Gervais
FROM: Harry Freebourn
CC: Randi Hood, Joslyn Hunt, Brent Doig
DATE: January 24, 2011
RE: Information Requests from the Section D Appropriation Subcommittee

This memorandum provides information that was requested during our Subcommittee Hearing.

1. Death Penalty cases and expenditures: Since the agency's inception on July 1, 2006, it has expended \$356,876 on five separate cases where the death penalty was a possibility at some point in time. In some instances a case began as a "death penalty case" and was changed to a "non-death penalty case" later in the judicial process. The agency inherited some cases and therefore the cost noted above excludes those that were paid by other governmental entities.
2. An attachment that explains the turnover in the appellate program and compares this rate to other neighboring states.
3. An attachment that reflects the salary survey information for the public defender program.

If you have any questions, please call me at 406-496-6084.



Brian Schweitzer
Governor

OFFICE OF THE APPELLATE DEFENDER STATE OF MONTANA

Chief Appellate Defender
Joslyn Hunt

MEMORANDUM

To: Pat Gervais, Senior Analyst, Legislative Fiscal Division

From: Joslyn Hunt, Chief Appellate Defender

Date: January 19, 2011

RE: Turnover Rates for Appellate Offices

In answer to Senator Zinke's question regarding turnover as it applies to the appellate defender offices in other states, I researched turnover in neighboring states (Idaho, Wyoming, North Dakota, and South Dakota) and submit the following for your review.

Idaho: They report rare turnover in the appellate office. They have recently lost two support staff members, but appellate attorneys have not left and do not want to leave. Staff members also do not normally leave. The appellate attorneys and staff have parity in pay with the appellate attorneys and staff in the Attorney General's Office in their state. The reason for such parity is the fact that in appellate litigation, the counterparts to the defense appellate attorneys are the appellate attorneys and staff in the Attorney General's Office-- i.e., we both do the same work, just on different sides. The appellate attorneys are exempt from the statewide-imposed 2% reduction in costs. And, the attorney positions are highly sought after, which accounts for the extremely low turnover rate.

An assessment of the Idaho State Appellate Public Defender's Office (SAPD) was done in June 2007 by the National Legal Aid and Defender Association. With regard to turnover, NLADA commented as follows on page 10 of that assessment:

Retention of well qualified legal staff beyond a two or three year office commitment is a continuing challenge for the SAPD and many other public defender offices. Attorneys frequently leave these positions because, with those years of additional experience, they find higher paying positions in other public sector agencies or with private law firms that value quality appellate litigators who possess excellent writing skills and expertise in the appellate court system. Their loss significantly impacts productivity and full adherence to the timely filing mandates set out by the appellate rules, resulting in case dispositional delays. However, retention may be enhanced by establishing a formal attorney career progression ladder which is linked to increased salary ranges and which presents committed attorneys with better options should they remain with the SAPD.

Wyoming: They report very low turnover rates in the appellate office, both for appellate attorneys and staff. The appellate attorneys and staff have parity in pay with the appellate attorneys and staff in the Attorney General's Office in their state. The reason for such parity is the fact that in appellate litigation, the counterparts to the defense appellate attorneys are the appellate attorneys and staff in the Attorney General's Office--i.e., we both do the same work, just on different sides.

North Dakota: They report very low turnover rates in the appellate office, both for appellate attorneys and staff. The appellate attorneys and staff have parity in pay with the appellate attorneys and staff in the Attorney General's Office in their state. The reason for such parity is the fact that in appellate litigation, the counterparts to the defense appellate attorneys are the appellate attorneys and staff in the Attorney General's Office--i.e., we both do the same work, just on different sides. The appellate office also receives, every year, a 5% cost of living adjustment.

South Dakota: They have a county-run system, much as the system existed in Montana prior to the statewide assumption in 2006. The attorneys who handle the criminal defense trials also handle the criminal defense appeals.

OFFICE OF THE STATE PUBLIC DEFENDER
AGENCY SALARY SURVEY INFORMATION FOR LAWYERS - 2010

1. The survey as attached contains annual base salaries of those individuals surveyed and does not include benefits.
2. Agency personnel conducted the survey by contacting human resource officers in city and county government in most of the areas where the agency does business.
3. The survey was conducted between January and July 2010.
4. The survey contains actual staff employee annual salaries and excluded lawyers with management duties, such as elected county attorneys.
5. The survey also contains the annual base salaries of all state lawyers as of July 2010 but excluded salaries of public and appellate defenders.
6. The survey contains 176 base salaries for county, city, and state attorneys.
7. The study summed all 176 salaries and developed an average salary of \$64,728.87.
8. There is also information attached that shows the state's market analysis for lawyers. This information shows that a pay band 7 lawyer market rate salary is \$95,987. The agency's staff lawyers are in pay band 7.

OFFICE OF THE STATE PUBLIC DEFENDER**Attorney Salary Survey - July 2010****MT Counties, Cities and Pay Band 7 State Attorneys excluding OPD****Location or State Position No.****Yearly Salaries**

Billings Deputy City Attorney	\$ 68,120.00
Billings Deputy City Attorney	78,852.00
Billings Deputy City Attorney	82,804.00
Billings Deputy City Attorney	82,804.00
Billings Deputy City Attorney	82,804.00
Billings Deputy City Attorney	82,804.00
Cascade - County - Civil	59,134.40
Cascade - County - Civil	72,571.20
Cascade - County Attorney	46,633.60
Cascade - County Attorney	53,144.00
Cascade - County Attorney	53,144.00
Cascade - County Attorney	63,128.00
Cascade - County Attorney	63,128.00
Cascade - County Attorney	65,145.60
Cascade - County Attorney	71,136.00
Cascade - County Attorney	82,908.80
Dawson Deputy County Attorney	55,842.49
Deputy County Attorney Anaconda	53,820.00
Flathead Civil Atty	58,286.80
Flathead Civil Atty	58,796.30
Flathead Criminal Atty	53,000.00
Flathead Criminal Atty	51,358.00
Flathead Criminal Atty	51,358.00
Flathead Criminal Atty	53,000.00
Flathead Criminal Atty	57,876.14
Flathead Criminal Atty	64,697.00
Gallatin DEPUTY ATTORNEY	71,493.00
Gallatin DEPUTY ATTORNEY	71,493.00
Gallatin DEPUTY ATTORNEY	47,001.00
Gallatin DEPUTY ATTORNEY	50,509.00
Gallatin DEPUTY ATTORNEY	53,495.00
Gallatin DEPUTY ATTORNEY	54,998.00
Gallatin DEPUTY ATTORNEY (CIVIL)	53,495.00
Gallatin DEPUTY ATTORNEY (CIVIL)	59,007.00
Hamilton Deputy County Attorney -Youth	61,630.40
Hamilton Deputy County Attorney-Civil	49,212.80
Hamilton Deputy County Attorney-Civil	50,606.40
Hamilton Deputy County Attorney-Civil	65,972.63
Hamilton Deputy County Attorney-Felony Criminal	74,539.02
Hamilton Deputy County Attorney-Justice Court	61,981.11
Hill Deputy County Attorney	52,000.00

OFFICE OF THE STATE PUBLIC DEFENDER**Attorney Salary Survey - July 2010****MT Counties, Cities and Pay Band 7 State Attorneys excluding OPD**

<u>Location or State Position No.</u>	<u>Yearly Salaries</u>
Lewis and Clark DEPUTY ATTORNEY Civil	58,822.40
Lewis and Clark DEPUTY ATTORNEY Criminal	55,556.80
Lewis and Clark DEPUTY ATTORNEY Criminal	55,556.80
Lewis and Clark DEPUTY ATTORNEY Criminal	63,731.20
Lewis and Clark DEPUTY ATTORNEY II Criminal	62,088.00
Lewis and Clark DEPUTY ATTORNEY II Criminal	75,483.20
Lewis and Clark DEPUTY ATTORNEY II Criminal	75,483.20
Lewis and Clark SENIOR COUNTY ATTORNEY Civil	91,977.60
Missoula Civil Attorney	46,280.00
Missoula Civil Attorney	47,736.00
Missoula Criminal Senior Criminal Atty	64,188.80
Missoula Senior Civil Deputy	65,291.20
Missoula Senior Civil Deputy	75,316.80
Missoula Senior Civil Deputy	85,072.00
Missoula Senior Criminal Atty	53,268.80
Missoula Senior Criminal Atty	53,622.40
Missoula Senior Criminal Atty	54,620.80
Missoula Senior Criminal Atty	65,312.00
Missoula Senior Criminal Atty	65,790.40
Missoula Senior Criminal Atty	71,718.40
Missoula Senior Criminal Atty	71,718.40
Silverbow - Deputy County Attorney	54,247.00
Silverbow - Deputy County Attorney	69,241.00
Silverbow - Deputy County Attorney	69,241.00
Silverbow - Deputy County Attorney	69,241.00
Yellowstone	48,000.00
Yellowstone	48,000.00
Yellowstone	55,000.00
Yellowstone	57,500.00
Yellowstone	57,500.00
Yellowstone	58,500.00
Yellowstone	58,500.00
Yellowstone	61,250.00
Yellowstone	64,000.00
Yellowstone	64,500.00
Yellowstone	66,500.00
Yellowstone	69,000.00
Yellowstone	69,000.00
Yellowstone	71,750.00
Yellowstone	71,750.00
Yellowstone	71,750.00

OFFICE OF THE STATE PUBLIC DEFENDER

Attorney Salary Survey - July 2010

MT Counties, Cities and Pay Band 7 State Attorneys excluding OPD

Location or State Position No.

Yearly Salaries

Yellowstone		71,750.00
Yellowstone		71,750.00
	31134002	58,697.60
	34100009	62,400.00
	34100052	64,896.00
	34100090	56,825.60
	34100305	72,092.80
	34100308	64,896.00
	34100404	64,896.00
	35100022	67,267.20
	41101006	65,083.20
	41101009	65,083.20
	41101016	65,083.20
	41101048	68,952.00
	41102024	65,083.20
	41103010	65,083.20
	41103202	65,083.20
	41103204	65,083.20
	41103205	65,083.20
	41103213	65,083.20
	41125303	65,083.20
	41166005	68,952.00
	41166012	65,083.20
	41166017	65,083.20
	41166141	68,952.00
	42100037	65,041.60
	42100038	60,923.20
	42100040	52,062.40
	52119806	66,206.40
	52119808	66,206.40
	52119813	66,206.40
	52119817	66,206.40
	52133802	83,948.80
	53100080	69,014.40
	53100304	69,430.40
	53100422	69,430.40
	53100496	82,825.60
	53104401	60,694.40
	57600023	72,092.80
	57600025	66,102.40
	57600046	69,472.00

OFFICE OF THE STATE PUBLIC DEFENDER

Attorney Salary Survey - July 2010

MT Counties, Cities and Pay Band 7 State Attorneys excluding OPD

Location or State Position No.

Yearly Salaries

57600054	69,326.40
57642105	66,102.40
57650321	66,560.00
57650690	69,472.00
57655251	75,608.00
58101017	64,396.80
58101803	64,064.00
58101805	64,064.00
58101806	64,064.00
58105214	64,064.00
61103626	78,228.80
61103633	69,992.00
61166243	72,009.60
61166246	56,659.20
61166252	61,796.80
61403818	56,243.20
64104006	65,416.00
64111004	67,766.40
64111007	62,400.00
65105104	70,033.60
65160065	50,024.00
66203103	66,372.80
66203112	66,372.80
66203115	66,372.80
66203116	66,372.80
66203117	66,372.80
66203128	66,372.80
66266503	66,372.80
66266504	66,372.80
66266904	77,584.00
66266905	66,372.80
66266911	79,622.40
66266924	63,752.00
66266985	66,372.80
66266991	66,372.80
69100121	64,147.20
69100924	69,014.40
69101000	69,867.20
69104006	69,222.40
69104020	69,867.20
69104021	69,867.20

OFFICE OF THE STATE PUBLIC DEFENDER

Attorney Salary Survey - July 2010

MT Counties, Cities and Pay Band 7 State Attorneys excluding OPD

Location or State Position No.

Yearly Salaries

69104035	69,867.20
69104419	64,147.20
69105020	54,475.20
69105021	69,222.40
69105022	64,376.00
69105023	63,211.20
69105203	54,475.20
69105242	54,475.20
69130259	64,147.20
69151181	68,328.00
69151513	68,328.00
69192401	69,867.20

Total all yearly salaries

\$ 11,392,280.49

Average Salary

\$ 64,728.87

MARKET ANALYSIS

Lawyer

The market rate (midpoints in the competitive pay zone) for this occupation at pay band 7 is **\$95,987**. Current broadband class series and corresponding market rates are:

Job Code	Class Series	Pay Band	Market Rate
231116	Lawyer	6	\$79,989
231117	Lawyer	7	\$95,987
231118	Lawyer	8	\$115,185

State Human Resources used the Tier 1 survey approach to produce this market analysis. For detailed information regarding the standard for this occupation go to: <http://online.onetcenter.org/link/summary/23-1011.00>. Following are the source data descriptions:

- **Occupational & Employment Statistics Survey (OES) 2008** - Represent clients in criminal and civil litigation and other legal proceedings, draw up legal documents, and manage or advise clients on legal transactions. May specialize in a single area or may practice broadly in many areas of law.
- **Central States Compensation Association 2009** - ATTORNEY - This is advanced professional legal work, with considerable independence and professional judgment on difficult cases, involving the representation of state agencies and departments, serving as a public defender or prosecutor in criminal trials. Minimum Qualifications: Graduation from an accredited school of law and progressively responsible experience in professional legal work. Must possess a certificate of admission to the Bar at the time of appointment.
- **Salary.Com 2010** - Prepares and examines contracts involving leases, licenses, purchases, sales, insurance, etc. Provides legal advice to an organization, prepares resolutions and forms, and participates in major legal actions. Responsible for foreseeing and protecting the company against legal risks. Must be a graduate of an accredited law school with 2-5 years of experience and admitted into the state bar. Familiar with a variety of the field's concepts, practices, and procedures. Relies on experience and judgment to plan and accomplish goals. Performs a variety of tasks. A wide degree of creativity and latitude is expected.

How market rates are determined

State Human Resources uses a two-tiered survey approach to determine market rates for state job occupations:

- A. Tier 1 (standard market analysis):** State Human Resources uses three survey sources (the U.S. Department of Labor's Occupational Employment Statistics (OES) survey, the Central States Compensation Association (CSCA) survey, and Salary.com) to capture market rates for

job occupations in Montana's regional labor market (Montana, North Dakota, South Dakota, Wyoming and Idaho).

- B. Tier 2 (*customized market analysis*):** At the request and consensus of employing state agencies, State Human Resources customizes its survey approach for job occupations that have recruitment and retention issues.

State Human Resources uses the median pay rate to determine the market rate under both approaches.

Job analysts and subject-matter experts compare state government occupations to descriptions in each survey source to ensure appropriate job matches. They match the complexity level of the surveys' occupational descriptions to the levels defined under Montana's broadband classification system. This process yields an "anchor point" for job occupations. Market rates for the same occupation classified at a lower pay band are set 20 percent below this anchor point; market rates for the same occupation classified at a higher pay band are set 20 percent above the anchor point.

How competitive pay zones are used

The state establishes a recommended competitive pay zone. Competitive pay zones are determined based on common industry practices. They are an external measurement. This competitive pay zone may be one of the many factors considered when setting pay. Pay adjustments depend on the state's ability to pay, collective bargaining (if applicable), and legislative approval. Montana state government does not guarantee employees are paid within their competitive pay zone.

The recommended competitive pay zone for the Lawyer series is:

Job Code	Class Series	Pay Band	Competitive Minimum Pay Zone Rate	Competitive Maximum Pay Zone Rate
231116	Lawyer	6	\$63,991	\$95,987
231117	Lawyer	7	\$74,966	\$117,008
231118	Lawyer	8	\$88,577	\$141,792